REMARKS

Claims 1-38 were originally filed in United States Serial No. 09/864,508 on May 24, 2001. In the response submitted September 8, 2003, claims 1, 5, 6, 11, 17, 18, 25, 31, and 32 were amended and claims 10, 22, and 36 cancelled. Reconsideration and allowance of claims 1-9, 11-21, 23-35, 37 and 38 based on the amendments and remarks presented herein, is respectfully requested. Applicant's Attorney would like to reference and thank the Examiner for the telephonic interview on January 28th, 2004 with James E. Oehlenschlager, Esq regarding the Office Action of January 5th, 2004.

35 USC §112 REJECTIONS

Claims 11-35, 37 and 38 have been rejected under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention.

The phrase "the admixture" in claim 11 has been alleged to lack proper antecedent basis. Claim 11 has been amended to recite "A cementitious composition comprising cement and at least one cement admixture, wherein the admixture comprises a polymer, a surfactant, and a hydrophobic material....." The support for the amendment is found on page 5, Lines 13-27 in the Specification. The amendment does not narrow the scope of the claim and is merely added for clarification.

The phrase "the admixture" in claim 25 has been alleged to lack proper antecedent basis. Claim 25 has been amended to recite "A method of forming a cementitious composition comprising mixing cement and at least one cement admixture, wherein the admixture comprises a polymer, a surfactant, and a hydrophobic material...." The support for the amendment is found on page 5, Lines 13-27 in the Specification. The amendment does not narrow the scope of the claim and is merely added for clarification.

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35 USC §103 REJECTIONS

Claims 1-4, 7-9, 11-16, and 19-30 have been rejected under 35 U.S.C. §103(a) as being unpatentable over PCT International Application No. 98/05709 for reasons that are set forth in the previous Office Action of April 10, 2003. It has been alleged that claims 1-4, 7-9, 11-16, and 19-30 are rendered obvious by the reference as Applicant is arguing limitations that are not present in the instant claims.

In traversing the rejection, Applicant for the sake of brevity incorporates the arguments presented in the response of September 8, 2003 to overcome the rejection of claims 1-4, 7-9, 11-16 and 19-30 based on the 98/05709 reference. Briefly, Applicant submits that the reference does not disclose that its enhancing material provides resistance to water permeation in cementitious articles as the present admixture composition does.

The Applicant has amended claims 1, 11 and 25 to better clarify that the admixture compositions provide water repellant properties to the cementitious composition. This amendment of the claims has support on Page 6, Lines 18-21, as set out below.

"The admixture composition imparts water repellant properties and prevents water permeation in poured concrete and in articles formed from cementitious compositions. These articles can include wet cast concrete, dry cast concrete, and manufactured concrete products." Page 6, Lines 18-21

Therefore, Applicant respectfully submits that the admixture in the 98/05709 reference is distinctly different from the compositions disclosed and claimed in the application. It is therefore respectfully submitted that claims 1-4, 7-9, 11-16, and 19-30 are patentable over 98/05709.

Claims 1-3, 5-7, 11-15, 17-19, 23-29, 31-33, 37 and 38 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,151,150 to Peters for the reasons set forth in the previous Office Action of April 10, 2003. It has been alleged that claims 1-3, 5-7, 11-15, 17-19, 23-29, 31-33, 37 and 38 are rendered obvious by the reference as Applicant is arguing limitations that are not present in the instant claims.

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In traversing the rejection, Applicant for the sake of brevity incorporates the arguments presented in the response of September 8, 2003 to overcome the rejection of claims 1-3, 5-7, 11-15, 17-19, 23-29, 31-33, 37 and 38 based on the '150 reference. Briefly, Applicant submits that unlike the present admixture composition that imparts water repellent properties and prevents water permeation in poured concrete and in articles (Spec Page 6, Line 18 to 21), the '150 reference teaches to one skilled in the art that to achieve the improved strength and adhesion of the invention a silane compound needs to be added to the latex. The '150 reference does not teach, suggest, or motivate one of skill in the art to increase the water repellency of cementitious compositions, but rather discloses that cementitious compositions that contain latex polymers without silane compounds do not provide the enhanced strength properties to cement.

The Applicant has amended claims 1, 11 and 25 to better clarify that the admixture compositions provide water repellant properties to the cementitious composition. As stated above, the amendment of the claims has support on Page 6, Lines 18-21.

Therefore, Applicant respectfully submits that the admixture in the Peters reference is distinctly different from the compositions disclosed and claimed in the application. It is therefore respectfully submitted that claims 1-3, 5-7, 11-15, 17-19, 23-29, 31-33, 37 and 38 are patentable over Peters.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge that the Examiner has indicated claims 34 and 35 are allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of the discussion held with the Examiner, the present amendments and remarks set out above, it is submitted that claims 34 and 35 are allowable in their present form.

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In view of the amendments and remarks contained above, Applicant respectfully requests reconsideration of the application, withdrawal of the 35 USC §103(a) and §112 rejections, and requests that a Formal Notice of Allowance be issued for claims 1-9, 11-21, 23-35, 37 and 38. Should the Examiner have any questions about the above remarks and amendments, Applicant's undersigned attorney would welcome a telephone call.

Respectfully submitted,

Joseph G. Curatolo, Esq. (Reg. No. 28,837)
James E. Oehlenschlager, Esq (Reg. No. 50,164)
Renner, Kenner, Greive, Bobak, Taylor & Weber
24500 Center Ridge Road, Suite 280
Westlake, OH 44145
Telephone: (440) 808-0011
Attorney for Applicants

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